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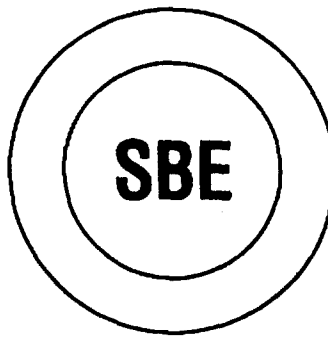
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FEDERAL COMMUNICATIONS COMMISSION  
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Comments of the  
Society of Broadcast Engineers, Inc.

MD Docket 94-19  
User Fees



April 7, 1994

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SOCIETY OF BROADCAST ENGINEERS, INC.  
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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Implementation of Section 9 )  
of the Communications Act )

Assignment and Collection of )  
Regulatory Fees for 1994 )  
Fiscal Year )

MD Docket No. 94-19

To: The Commission

**Comments of the Society of Broadcast Engineers, Inc.**

The Society of Broadcast Engineers, Incorporated ("SBE"), the national association of broadcast engineers and technical communications professionals, with more than 5,000 members in the United States, hereby respectfully submits its comments in the Notice of Proposed Rulemaking ("NPRM"), FCC 94-46, released March 11, 1994, 59 Fed. Reg. 12570, proposing the implementation of the regulatory, or "user" fees authorized by the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, which created Section 9 of the Communications Act (codified at 47 U.S.C. §159). In response to several of the user fee proposals, SBE states as follows:

**I. No Fee Should Be Imposed for Existing Lifetime Operator Licenses**

1. The SBE recognizes that annual fees have been mandated by Congress in its passing of the Omnibus Budget Reconciliation Act of 1993. As stated at Paragraph 2 of the NPRM, one of the goals of that act was to re-invent Government by requiring beneficiaries of Commission services to pay for such services. While the SBE notes that its members are already paying for federal government services by virtue of their federal income tax payments, and are now being asked, in effect, to pay twice for those services, the SBE also recognizes that this rule making proceeding is not the proper forum to debate that issue, and will not pursue the matter any further in this document.

2. The SBE believes that the Commission has erred in its conclusion that an annual regulatory fee of \$7.00 should apply to *existing* lifetime radio operator licenses such as the Restricted Radiotelephone Operator Permit or to the General Radiotelephone Operator License. Because

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these documents are valid for the lifetime of the holder, there is, of course, no renewal application, nor any service provided by the Commission with respect to these licenses, other than the mere maintenance of a data base. There is accordingly no fee that could be assessed at the time of the non-existent renewal application.

3. Because these are lifetime documents, many holders of those documents who have moved have undoubtedly failed to notify the Commission of their new address. Indeed there is no requirement to do so. The proposal in the NPRM that the Commission would have to attempt to locate these persons to notify them of a past-due fee, and then to begin revocation proceedings against the thousands, possibly tens of thousands, of licensees it could not locate, is ludicrous. As noted at Paragraph 2 of the NPRM, the fee collection process is not supposed to have an adverse impact on the Commission's regulatory activities, and that the new fees are to "impose little or no additional paperwork burden on the public."

4. If a one-time regulatory fee is deemed to apply to existing holders of lifetime operator licenses or permits, there will inevitably be some persons who never get word of the fee, or who intentionally choose to not pay such a fee. Those licenses would therefore be canceled. However, the SBE is not sure how one goes about canceling a lifetime license *ex post facto*. Presumably the Commission would have to establish a data base for interested parties and for the FCC's field inspectors to access, in order to determine whether a particular lifetime Restricted Radiotelephone Operator Permit or lifetime General Radiotelephone Operator License had been canceled for non-payment. The cost to the broadcasting industry, in terms of the hours spent administering such a system, is obvious, to say nothing of the administrative burden it would place on Commission staff.

5. If a dial-up data base of non-canceled lifetime operator permits or licenses is created, two liability questions become apparent: one, if an operator applies at a broadcast station for employment, but the Commission's data base incorrectly fails to show that person's lifetime permit or license as still being valid, the operator would undoubtedly not be hired. What would the operator's recourse be? Second, if a broadcast station has allowed a person holding a lifetime permit or license to act as the duty operator, signing the station log, and it is later determined that the "lifetime" permit or license had been canceled for non-payment of a one-time regulatory fee, would the station be subject to a Notice of Apparent Liability for allowing an unlicensed operator to be in control of the station?

6. Certainly the Commission should be able to assess a "lifetime" regulatory fee at the time *new* Restricted Radiotelephone Operator Permits and General Radiotelephone Operator Licenses

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are issued, in order to carry out its Congressional mandate. At the current \$7.00 annual rate, the proposed one-time, lifetime fee of \$105, representing 15 years, is not unreasonable for the General Radiotelephone Operator license, especially for younger applicants. But a one-time \$105 fee would be unreasonable for new holders of the Restricted Radiotelephone Operator Permit, since this is a token permit that has no examination. The current \$35.00 processing fee the Commission now charges for this wallet-sized document is already a generous amount. Surely even the Commission cannot claim with a straight face that it costs that amount to print and issue a wallet-sized card, which is not even laminated. The Commission should declare that the \$35.00 application fee for the lifetime Restricted Radiotelephone Operator Permit also constitutes the lifetime annual user fee for that document.

7. With regard to Restricted Radiotelephone Operator Permits issued to operators at noncommercial educational FM and TV station, a special provision now exists where such persons can obtain a Permit without paying the normal \$35.00 application fee. The Permit is issued with a restrictive endorsement, indicating that it is only valid for use at noncommercial stations. If the Commission does not adopt the SBE suggestion that the application fee should also be deemed to be the one-time regulatory fee, we suggest adoption of a provision to spare persons who are duty operators at noncommercial stations from having to pay the one-time regulatory fee. Such persons are often students, or persons who volunteer their time, who may not be able to afford such cost.

### **II. Annual Regulatory Fees for Broadcast Auxiliary Stations are Improper as a General Matter**

8. The Commission proposes, at Paragraph 72 of the NPRM, that Broadcast Auxiliary stations should be assessed a \$25.00 per license annual regulatory fee for FY 1994. This is incongruous, to say the least, since the auxiliary services are essentially self-administered. These are shared frequencies, which are subject to voluntary coordination among the eligible users. The SBE has pioneered the concept of cooperative sharing in the Broadcast Auxiliary bands, and has sponsored and fostered a well organized group of volunteers in most markets in the United States who carefully maintain data bases and facilitate licensee-to-licensee contact among local and visiting broadcasters. The result is a self-administered system that is a model of self-enforcement. The Commission has on numerous occasions noted the success of SBE-sponsored volunteer frequency coordination in the Broadcast Auxiliary bands. While it is understood that the purpose of this proceeding is to implement a schedule of regulatory fees for various services, there is no justification for the imposition of a regulatory fee for the Broadcast Auxiliary Services ("BAS"),

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meaning remote pickup stations ("RPU"), Aural Broadcast Auxiliary stations, Television Broadcast Auxiliary stations, and Low Power Auxiliary stations (*e.g.*, wireless microphones). These BAS operations, other than with respect to initial licensing and renewal applications, for which application fees are already charged under Section 8 of the Communications Act, are self-regulating and should not be subject to annual regulatory fees.

### **III. Non-profit Entities in the Broadcast Auxiliary Services Should be Fee Exempt**

9. The SBE has before the Commission a pending Petition for Rule Making\* that would allow its volunteer frequency coordinating committees to become eligible for licensing in the Broadcast Auxiliary Services. This would allow frequency coordinating committees to operate, for example, a 450 MHz RPU station to assist guest broadcast network or cable network entities with Broadcast Auxiliary licensees such as ABC, CBS, CNN, ESPN, Fox, NBC, etc., that often temporarily enter an area for a news or sports event. If an RPU channel is available to a local frequency coordinating committee, it would be easier to coordinate the most appropriate RPU or TV Pickup frequency, thus minimizing the impact to local broadcast stations.

10. Since these committees operate on a volunteer, unpaid basis, the imposition of even a \$25 annual fee for a Broadcast Auxiliary license granted to a frequency coordinating group would not be in the public interest. The Commission has on many occasions commended the SBE and its affiliated frequency coordinating committees, and has acknowledged that these efforts save Commission staff hundreds of hours that it would have to otherwise spend in responding to interference complaints if this program of self-regulation were not in place. The SBE therefore urges the Commission to include in its proposed fee exemption for nonprofit (IRS Section 501) entities the Part 74 BAS, in addition to the proposed Special Emergency and Public Safety radio services. The Commission should also find that the non-profit status of the SBE accrues to its affiliated volunteer frequency coordinating committees.

### **IV. No Annual Fee Should Accrue to Dedicated EBS Broadcast Auxiliary Stations**

11. The Federal Emergency Management Agency ("FEMA") has a program wherein it provides selected broadcast stations with two-way communications equipment, generally in the

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\* "In the Matter of Amendment of Section 74.832 of the Commission's Rules to Expand the Eligibility for Licensing of Low-Power Auxiliary Stations to Include Recognized Frequency Coordination Entities," RM-\_\_\_\_. Petition filed November 28, 1990. No Rule Making number has yet been assigned.

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160 MHz Broadcast Auxiliary band, to establish standby circuits from places where official broadcasts may be made during times of emergency. These links are then licensed as "Remote Pickup Base ("EBS")" stations. They differ from other RPU stations in that they may only be used for emergency communications.

12. Since these stations use government-provided equipment, and are dedicated for Emergency Broadcast System (EBS) use, the SBE believes that the Commission should apply the Public Safety/Emergency Radio user fee exemption to such dedicated Broadcast Auxiliary stations, and not assess the \$25.00 annual fee that would otherwise accrue.

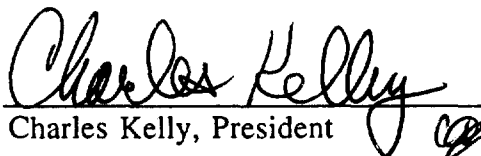
### V. Postmark Date Should Govern, Not the Delivery Date

13. Paragraph 41 of the NPRM proposes that a payment will be considered late if it is not received at the lock box bank by the due date specified by the Commission. The SBE believes it would be more equitable to only require that a letter properly addressed to the lock box bank be *postmarked* by the due date, rather than *delivered* by the due date. To base the non-trivial proposed late fee of 25% on the reliability of the U.S. Postal service would be unfair to Commission licensees, who would be forced to mail payments weeks in advance to ensure that they were received by the lock box bank by the deadline date, or would be forced to use a more reliable but more expensive delivery service such as Federal Express or United Parcel Service. This hidden cost does not appear to have been considered in the NPRM's Regulatory Flexibility Act Analysis.


Therefore, the foregoing considered, the Society of Broadcast Engineers, Incorporated respectfully requests that the proposal for implementation of regulatory fees, per Section 9 of the Communications Act of 1934, as recently amended, be modified as per the above comments in any final order adopted in this docket proceeding.

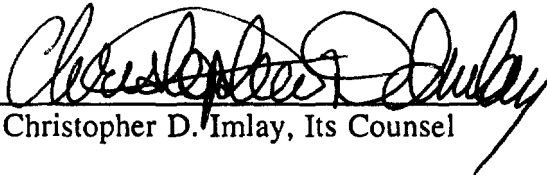
Respectfully submitted,

Society of Broadcast Engineers, Inc.

By   
Charles Kelly, President

**SBE Comments: MD Docket 94-19**

By   
Dane E. Ericksen, P.E.  
Chairman, SBE FCC Filings Committee

By   
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April 7, 1994

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